

Remarks

Applicants have cancelled claims 2-14, 16, 20-21, and 26 without prejudice or disclaimer. New claims 27-59 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. New claims 26-116 find support throughout the specification and claims as originally filed, and thus no new matter has been added.

Original claims 1, 15, 17-19, and 22-25, and new claims 27-59, are pending.

The Restriction Requirement

Pursuant to Paper No. 3, mailed March 11, 2003, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-X. The Examiner contends that the inventions are distinct, each from the other.

In response, Applicants provisionally elect, *with traverse*, the invention of Group VI, represented by original claims 20-21 (now cancelled), and new claims 27-59, drawn to methods of treatment using HMF polypeptides, for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 2-14, 16, 20-21, and 26 have been canceled without prejudice or disclaimer, and that new claims 27-59 are directed to subject matter falling within the ambit of Group VI as cast by the Examiner.

With respect to the Examiner's division of the invention into ten groups and the reasons stated therefor, Applicants respectfully disagree and traverse.

Applicants point out that even where patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden." *See* M.P.E.P. § 803. In the present situation, no such showing has been made. Although the Examiner has argued that Groups I-X are separately classified, Applicants nonetheless submit that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, antibodies to the protein, and methods of making and using the same. Thus, since the searches for proteins,

nucleic acids encoding such proteins, antibodies to such proteins, and methods of making and using the same commonly overlap, the combined search and examination of such compositions and methods using the same would not entail a serious burden, even assuming *arguendo* that all of the searches were not coextensive.

Accordingly, in view of M.P.E.P. § 803, the claims of all of Groups I-X should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

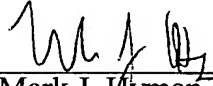
Conclusion

Entry of the above amendment is respectfully solicited. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Respectfully submitted,

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